

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 46. BOARD OF APPRAISAL

Editor's Note: The following Notice of Proposed Rulemaking was reviewed per the Governor's Regulatory Review Plan memorandum, January 22, 2009 and its continuations issued April 30, June 30, and October 16, 2009. The Governor's Office authorized the notice to proceed through the rulemaking process on November 10, 2009.

[R10-19]

PREAMBLE

- 1. Sections Affected**
R4-46-401
- Rulemaking Action**
Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):**
Authorizing statute: A.R.S. § 32-3605(A)
Implementing statutes: A.R.S. §§ 32-3605(B)(1) and 32-3635(A)
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 16 A.A.R. 329, February 19, 2010
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: J. Randy Frost, Interim Executive Director
Address: 1400 W. Washington St., Suite 360
Phoenix, AZ 85007
Telephone: (602) 542-1593
Fax: (602) 542-1598
E-mail: appraisal@appraisal.state.az.us
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**
The change in the rule is to comply with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, which requires state licensing boards to recognize and enforce the *Uniform Standards of Professional Appraisal Practice* (USPAP); and A.R.S. § 32-3605(B)(1), which requires the Board to adopt standards for professional appraisal practice that are at least equal to USPAP. The amended rule incorporates by reference the 2010-2011 edition of USPAP. The revisions in the 2010-2011 edition of USPAP are the result of three exposure drafts, issued by the Appraisal Standards Board (ASB) on October 3, 2008 (First Exposure Draft), December 10, 2008 (Second Exposure Draft), and February 10, 2009 (Third Exposure Draft). The ASB received written comments from interested parties on all three Exposure Drafts and heard oral comments at public meetings on November 28, 2008, February 23, 2009, and April 3, 2009. The changes were adopted by the ASB and are incorporated in the 2010-2011 edition of USPAP and associated guidance with an effective date of January 1, 2010. The key features of the 2010-2011 edition are: (1) Definition of "Assignment." The definition of assignment was changed from "a valuation service provided as a consequence of an agreement between an appraiser and a client" to "1) an agreement between an appraiser and a client to provide a valuation service; 2) the valuation service that is provided as a consequence of such an agreement." As a result, the edits addressed the inconsistency by revising the definition rather than rewording the document whenever assignment was used to refer to the agreement. (2) Definition of "Signature." The "Comment" was removed from the definition of "Signature." This change appropriately relocates requirements for proper management of an appraiser's signature from the definition to a Rule. (3) Definition of "Jurisdictional Exception." A revision to the def-

Notices of Proposed Rulemaking

inition of the term *Jurisdictional Exception* from “an assignment condition that voids the force of a part or parts of USPAP, when compliance with part or parts of USPAP is contrary to law or public policy applicable to the assignment,” to “an assignment condition established by applicable law or regulation, which precludes an appraiser from complying with a part of USPAP.” This change is intended to clarify that jurisdictional exceptions are created when compliance with USPAP is precluded by law or regulation. (4) The “Ethics Rule” was largely rewritten. The proposed changes from the Third Exposure Draft were adopted, making revisions to portions of the entire Rule: the introductory section, conduct section, management section, confidentiality section, and recordkeeping section. The primary purpose is to increase clarity and enforceability, and to promote and preserve public trust. (5) The “Competency Rule” was essentially rewritten. The changes proposed in the Third Exposure Draft were adopted. The following changes to the format of the Rule were made to improve its clarity: Dividing the Rule into three sections to distinguish an appraiser’s competency obligations in an assignment; Description of the characteristics of competency; States the alternative actions an appraiser can take when he or she is not competent to perform the assignment. (6) The “Jurisdictional Rule” was revised. The rule was clarified by reorganizing the text and specifically identifying the four requirements imposed on an appraiser in assignments involving a jurisdictional exception: 1) identify the law or regulation that precludes compliance with USPAP; 2) comply with that law or regulation; 3) clearly and conspicuously disclose in the report the part of USPAP that is voided by that law or regulation; or 4) cite in the report the law or regulation requiring this exception to USPAP compliance. (7) Standard 3, Appraisal Review, Development and Reporting. The Standard has been rewritten significantly. The “Standard” was divided into two sections; one addressing development, and one addressing reporting. The revised language mirrors the form and content of the other Standards. The “Comment” sections in the Standard were revised to incorporate “Comment” language found in other Standards. Some language was relocated to more appropriate locations. Revisions were made to expand and distinguish the development and reporting requirements. Other edits were made to create a more logical and comprehensive structure. Additional edits were made to better guide a review process that is in practice quite broad and flexible. Finally, revisions were made to organize and clarify the requirements that apply to a reviewer providing their own opinion of value, review opinion, or consulting opinion related to the work that is the subject of the appraisal review assignment.

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not to rely on its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, any analysis of each study and other supporting material:

None

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business and consumer impact:

The rule is being changed to adopt the latest standards of practice in the profession, as required by federal and state law. The primary groups that will be affected are the Board, the licensed or certified appraisers, and the public. The Board adopts the latest standards for professional appraisal practice as they are adopted by the ASB and there should be no appreciable changes in the economic impact. However, USPAP prior to the 2006 edition was revised annually, the 2006 edition was effective for 18 months, and the 2010-2011 edition is effective for two years, which results in USPAP having to be purchased less often. The cost for the new edition, which now includes Frequently Asked Questions, is \$50. Not all appraisers will find it necessary to own a copy. Some offices share copies. The cost is a deductible business expense.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: J. Randy Frost, Interim Executive Director
Address: 1400 W. Washington St., Suite 360
Phoenix, AZ 85007
Telephone: (602) 542-1593
Fax: (602) 542-1598
E-mail: appraisal@appraisal.state.az.us

10. The time, place and nature of the proceedings for the making, amendment or repeal of the rule, or, if no proceeding is scheduled, where, when and how persons may request an oral proceeding on the proposed rule:

Date: April 23, 2010
Time: 8:00 a.m.
Location: 1101 W. Washington St.
Carnegie Center, Phoenix, AZ
Nature: The Board will hold an open meeting to hear opinions and suggestions, and to adopt, amend or

Notices of Proposed Rulemaking

repeal the rule. The Agenda for this Board meeting will be available to the public the day before the meeting. It may be obtained by contacting the Board office at (602) 542-1558, or by visiting the Board's web site at www.appraisal.state.az.us, [Meetings](#), [Board Meeting Agenda](#). In addition, written comments will be accepted at the Board office, 1400 W. Washington St., Suite 360, Phoenix, AZ 85007 between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday through April 22, 2010.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

12. Incorporation by reference and their location in the rules:

The *Uniform Standards of Professional Appraisal Practice* (USPAP), 2010-2011 Edition, published by The Appraisal Foundation and effective nationally January 1, 2010. The location in the rules is R4-46-401.

13. The full text of the rule follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 46. BOARD OF APPRAISAL

ARTICLE 4. STANDARDS OF PRACTICE

Section

R4-46-401. Standards of Appraisal Practice

ARTICLE 4. STANDARDS OF PRACTICE

R4-46-401. Standards of Appraisal Practice

Every appraiser, in performing the acts and services of an appraiser, shall comply with the Uniform Standards of Professional Appraisal Practice (USPAP), ~~2008-2009~~ 2010-2011 edition, published by The Appraisal Foundation, which is incorporated by reference and on file with the Board. This incorporation by reference contains no future editions or amendments. A copy of the USPAP ~~2008-2009~~ 2010-2011 edition may be obtained from The Appraisal Foundation, 1155 15th Street, NW, Suite 1111, Washington, D.C. 20005; (202) 347-7722; fax (202) 347-7727; or web site www.appraisalfoundation.org.